IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.7229-CAT of 2005
Date of decision: 01.10.2007

Union of India

-----Petitioner

Vs.

Smt.Kamla Devi and others

-----Respondents

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE AJAI LAMBA

Present: Mr. Nitin Kumar, advocate for the petitioner.
Mr. Vijay Lath, Advocate.

JUDGMENT:

This petition challenges order of the Central Administrative (CAT) dated 30.7.2004, Annexure P.19, partly allowing application of respondent Nos. 1 and 2, converting punishment of removal into that of compulsory retirement.

Case of respondents – original applicants was that respondent No.2 had joined as a Gangman in the Railways on 12.5.1979. He was posted at Shimla and on 31.8.1996, he was transferred to Ambala at his own request. After joining at Ambala, he absented from duty after 21.7.1997. He was given a charge sheet for unauthorised absence and after holding that the charge

was proved, he was ordered to be removed from service vide order dated 27.6.2000. The said order was affirmed in appeal.

Respondent No.1 is wife of respondent No.2 and according to her, respondent No.2 left the house on 17.12.1999 in an unsound mental health. She lodged FIR dated 20.12.1999 and thus, he could not join the enquiry proceedings. It was also submitted that punishment of removal was disproportionate to the charge in these circumstances. The employee had already rendered service of 18 years.

The CAT held that from the record, Annexures A/8 to A/10 before it, it was clear that the employee was not in sound mental health and in such circumstances, having regard to 18 years of service already rendered, the family of the employee ought not to be deprived of the retirement benefits. Accordingly, instead of punishment of removal from service, punishment of compulsory retirement was directed to be imposed.

Contention raised on behalf of the petitioner is that sympathy could not be a ground for awarding lesser punishment.

Though, there is merit in the contention that mere sympathy cannot be a ground for interfering with the punishment imposed after disciplinary proceedings, in the present case, order of the CAT is not based merely on sympathy alone. The CAT has held that the nature of misconduct had to be seen in the backdrop

of mental health condition of the employee and has applied the principle of proportionality for holding that punishment of removal could not be justified and instead punishment of compulsory retirement would be proper.

We are conscious of the fact that normally, interference with the quantum of punishment imposed by the disciplinary authority is not permissible unless the punishment is grossly unjust and shocks the conscious of the Court. At the same time, doctrine of proportionality can be invoked in an appropriate case. Reference may be made to the law laid down by the Hon'ble Supreme Court in **State of U.P. v. Jaikaran Singh**,***(2003) 9 SCC 228,*** **State of U.P. v. Sheo Shanker Lal Srivastava**,***(2006) 3 SCC 276,*** **Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Association and another,** ***(2007) 4 SCC 669,*** **Om Kumar v. Union of India, AIR 2000 SC 3689 Teri Oat Estates (P) Limited v. UT Chandigarh,** ***(2004) 2 SCC 130 and*** **Union of India v. G.Ganayutham,** ***AIR 1997 SC 3387.***

In view of above, the view taken by the CAT is not liable to be interfered with.

The petition is dismissed.

(Adarsh Kumar Goel)
Judge

October 01, 2007 **(Ajai Lamba)**
'gs' **Judge**